

## CREATING THE ENVIRONMENTAL WATER ACCOUNT

In late 1998, stakeholders and state and federal agencies agreed that creating an “environmental water account” (EWA) would provide greater water management flexibility than imposing new regulatory requirements to satisfy fishery needs. Both fish and water users can benefit from this flexibility. Since that time, extensive modeling has shown the value of certain kinds of EWA assets and the general range of assets the fish need. In order to establish and begin operating the EWA, the agencies will need to agree to its initial size and shape, as well as the framework for how it will operate. The agencies have not achieved agreement on these issues because the EWA’s creation will require substantial funding and acquisition of water from a system that has lost most of its flexibility.

### ISSUES

**Assets.** The most important – and most difficult – issue is identifying and acquiring the proper mix of EWA assets, which needs to include water and access to conveyance and storage. The first question is how much water do the fish need, particularly during Stage 1. The modeling of fishery needs provides some base of information for determining that number.<sup>1</sup> Although the modeling, by its nature, has some weaknesses and is not precise, it found that flexible use of the CVPIA/(b)(2) water provided a substantial amount of the necessary fish protection. Also, the modeling generally indicated additional fishery needs ranging from an additional 45 thousand-acre-feet (TAF) to 710 TAF, with an annual average of approximately an additional 400 TAF.<sup>2</sup> That water fulfilled all priority “A” (i.e. most important) fish protection actions and most of the priority “B” actions.

The modeling indicated that access to export conveyance, in-Delta storage, and storage south of the Delta provides a critical link to the EWA’s success. In the early years, the EWA will depend, in part, on water acquisitions through the spot market, which would then need to be conveyed, if not already south of the Delta, and stored. (Keeping EWA water south of the Delta allows EWA operators to compensate the Projects with south-of-Delta water for reduced pumping for fish protection.) Gaining access to conveyance and storage will require either the Projects giving the EWA access to existing facilities (which may require adjustment to the CVP/SWP Coordinated Operating Agreement) and/or funding the EWA’s acquisition of new facilities. Such new facilities could be shared with the Projects.

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<sup>1</sup> Water modelers and biologists used the actual hydrology and fish salvage numbers at the export pumps from 1981-90 and estimated how much additional export reductions would be required to accomplish a prioritized list of fish protection actions. The biologists divided the list of priority fish protection actions into three prioritized categories – A, B and C.

<sup>2</sup> It should be noted that these averages come from modeling that does not consider fully the Projects’ ability to shift the timing of export pumping or Interior’s access to water arising out of the “reset” provision of the (b)(2) policy, which could further reduce the water needed for protecting fish.

### ***Discussion Draft - March 23, 2000 (4:14PM)***

**EWA Foundation.** Creating an EWA assumes a Foundation Level of Protection for fish and implementation of the Ecosystem Restoration Program, which would include upstream flows, and certain established actions. The dispute arises, however, about “where to start” in counting water for environmental purposes. This dispute has proven to be the most divisive, with stakeholders staking out their respective “baselines” and arguing about which is most appropriate. In creating an EWA, the debate needs to shift to where, in the future, the counting of EWA water use will begin, instead of arguing about how much has been used for the environment in the past. The water users assert that baseline should start with any action beyond the standards in the Accord. Environmentalists argue that the baseline should include all existing standards and water demands at the time of the ROD, which would include: additional export reductions during the critical spring “pulse flow period” (AKA “VAMP reductions”); the current method for (b)(2) accounting; and biological opinions for spring-run salmon, steelhead and splittail.

**Focus.** Since its initial conception, there has been much debate about the EWA’s primary purpose. The Projects and their contractors see it as the compensation fund to repay the Projects for taking any environmental action. Some water users see it as a way to improve Delta water quality. The fishery agencies believe the account should focus on the needs of listed species and general ecosystem benefits. While these purposes often may overlap, when there is conflict among these purposes, one of the purposes needs to be chosen as the primary purpose.

**Control.** Because the EWA will control a significant amount of water, most agencies and stakeholders have expressed some interest in having some influence over its use. Project contractors want to ensure proper compensation, while other water users want to promote water quality. The fishery agencies wish to control the EWA because they are providing ESA assurances, and wish to ensure that its resources remain focused on recovery of listed species. Choosing who controls the EWA may affect the choices of assets acquired and the application of EWA water.

### **RECOMMENDATIONS**

**Establish EWA and set a target for EWA assets to include 400,000 acre-feet of water annually as well as access to conveyance from the Delta and storage.** CALFED has made and will continue to invest substantially in ecosystem restoration (i.e. habitat development). After gaining substantial experience in operating the EWA and the benefits of restoring the ecosystem are realized, this target may be adjusted.

**Deposit 75,000-150,000 acre-feet of water into EWA on October 1, 2000, and then develop additional deposits to the extent possible.** During the first years, the EWA’s assets would include:

1. access to SWP conveyance on a priority equivalent to – or just below – SWP’s “interruptible water, assuming such priority provides the necessary conveyance;”\*

*Discussion Draft - March 23, 2000 (4:14PM)*

2. credit for water pumped by SWP that is used for instream flows upstream from the Delta ("windfall water");\*
3. 200 TAF of storage rights south of the Delta, which could include access to existing groundwater storage, CVP/SWP terminal reservoirs and/or MWD's new Diamond Valley Lake;\*
4. access to in-Delta storage;
5. access to surplus water from Friant (i.e. "215 water"), with possible storage in Kern Water Bank
6. relaxation of Export/Inflow ratio whenever possible, with EWA receiving the additional increment of water;
7. temporary 500 cfs increase of Banks pumping during the summer;
8. evaluation -- and possible purchase -- of Yuba River water options;
9. opportunity to shift CVP/SWP pumping to later in the year, provided such pumping is recovered by March 31 of that year.\*
10. purchase of at least 200,000 acre-feet of south-of-Delta water.

\* Asterisks indicate that these assets may require adjustment of the CVP/SWP Coordinated Operations Agreement and/or SWP contracts. In order to be effective and allow for ESA assurances immediately, the EWA will need access -- in the short-term -- to SWP conveyance and storage capacity. (Because of CVPIA Section 3406(b)(2), EWA already has access to CVP facilities.) *DWR has raised significant concerns with providing such access if SWP contractors incur costs or losses. Resolving this critical issue is a key challenge to establishing an EWA.*

We anticipate that firm funding of \$40 million annually will be needed to support the EWA in the early years.

**Expand EWA as new CALFED projects begin operating.** By dedicating a percentage of the water from new facilities, those assets will provide environmental benefits as the EWA portfolio gains greater stability. The initial assets identified above then can be reduced as other assets come on line. Those fishery benefits will foster broader support for such new facilities. *DWR believes that focusing on developing new water facilities for shared use by the EWA and the Projects is the best way to provide the EWA with reliable access to the conveyance and storage it needs.*

**Develop or acquire assets for the EWA.** Developing permanent assets for the EWA will allow it to reduce its dependence on water acquisitions. For storage, the EWA should acquire access to in-Delta and south-of-Delta storage space at the earliest available opportunity. The EWA should acquire additional permanent water rights and/or SWP/CVP entitlements.\*

**Jointly manage EWA assets and upstream flows acquired through ERP.** Anadromous fish will need upstream releases for instream flows and the Ecosystem Restoration Program intends to acquire upstream water for instream flows. When possible, those flows should be taken into the EWA by exporting the water to south-of-Delta storage. At other times, such flows may

*Discussion Draft - March 23, 2000 (4:14PM)*

contribute to Delta outflow. Accomplishing these multiple purposes will require integrated management of these two environmental water sources.\*

**Charge EWA for all fishery actions beyond the Foundation Level of Protection.** The Environmental Water Account will employ its assets to provide fish benefits that supplement, and do not replace, the following "Foundation Level of Protection":

1. Compliance with the 1995 Water Quality Control Plan
2. Prescribed actions in 1993 Winter-Run Biological Opinion (as interpreted by NMFS)
3. Prescribed actions in 1995 Delta Smelt Biological Opinion (as interpreted by FWS).  
*DWR interprets this Biological Opinion differently.*
4. Implementation of CVPIA Section 3406(b)(2) (as interpreted by Interior). This would include "capping" the (b)(2) crediting toward meeting the Delta Water Quality Control Plan standards, pursuant to the October 1999 (b)(2) decision; and
5. Implementation of Trinity River decision (as interpreted by Interior)

**Focus on listed species' needs, in exchange for ESA assurances.** From conception, the EWA has focused on how to provide water for listed species above the Foundation Level of Protection without reducing water supply reliability. The EWA will form a cornerstone for protecting listed species which will enable the fishery agencies to provide ESA assurances regarding Project water supply reliability. The EWA therefore should focus on the needs of listed species.

**Fishery agencies should decide how best to apply the EWA's resources.** In consideration for their providing ESA assurances, the fishery agencies should have the authority to determine how best to use the EWA's assets to benefit listed species. They will work with the Project operators in calculating the "cost" of taking any action (i.e. how much EWA water it will take to reduce pumping or establish a particular instream flow). The EWA managers should also apply the scientific advice provided by CALFED's science program.

**New flow requirements, outside of CALFED, will not be included in EWA.** When non-CALFED agencies (e.g. FERC) impose new flow requirements outside the established scope of the EWA, the EWA generally will not compensate for those new requirements. If, however, the SWRCB imposes new Central Valley water quality standards for the beneficial use of fisheries, then complying with such standards would be covered by the EWA.

**Balance fishery needs and water quality concerns.** In operating the EWA, the operators should balance how EWA actions will affect the Delta's water quality.